

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DATE 4/21/2023

DISTRICT JUDGE
Amos L. Mazzant, III

COURT REPORTER: Chris Bickham
COURTROOM DEPUTY: Keary Conrad

UNITED STATES OF AMERICA	
V.	CASE NUMBER 4:20CR212
DEBRA MERCER-ERWIN (1)	
ATTORNEY FOR GOVERNMENT	ATTORNEY FOR DEFENDANT
Ernest Gonzalez, Heather Rattan and Lesley Brooks, AUSA	Matthew Cyran, Joe White, Kate White

On this day, came the parties by their attorneys and the following proceedings were held in Sherman, TX:

TIME:	MINUTES: Jury Trial – Day 8
8:03 a.m.	Court in session. Court notes appearance of counsel.
8:04 a.m.	Court hears from Government AUSA Lesley Brooks regarding waiver of proffer by the Defendant. The Court hears argument from counsel regarding Rule 410, the proffer, the waiver of the proffer and the violations of the agreement. Government will reach out to Mr. Coyle for his availability.
8:32 a.m.	Jury seated.
8:33 a.m.	Government AUSA Lesley Brooks calls Paul Mack. Witness placed under oath. AUSA Brooks begins direct examination of Paul Mack.
8:40 a.m.	Government AUSA Lesley Brooks offers Government Exhibit 97 as demonstrative. No objection. Government Exhibit 97 is admitted as demo only.
8:49 a.m.	Government AUSA Lesley Brooks offers Government Exhibit 31 as demonstrative. No objection. Government Exhibit 31 is admitted as demo only.
9:50 a.m.	Bench conference at request of Defendant's counsel.
9:52 a.m.	AUSA Brooks continues direct examination of Paul Mack.
	Government AUSA Lesley Brooks offers Government Exhibit 30 as demonstrative. No objection. Government Exhibit 30 is admitted as demo only.
10:07 a.m.	Government AUSA Lesley Brooks offers Government Exhibit 33A. No objection. Government Exhibit 33A is admitted.
10:11 a.m.	Jury excused for morning break.
10:12 a.m.	Court questions Defendant's counsel regarding proffer. Rule 410 only applies if it is plea bargaining. Court hears argument from Defendant's counsel regarding Rule 11 proffer. Defendant argues that 410 protects the proffer. Court hears response from the Government AUSA Ernest Gonzalez and AUSA Lesley Brooks. Court believes there is still a third-party beneficiary agreement. Court will plan on them participating at 4:00

	today.
10:25 a.m.	Court recess for 15 minute break.
10:42 am	Court re-convened. Court addresses counsel regarding matters.
10:45 am	Jury seated. AUSA Brooks continues direct examination of Special Agent Paul Mack.
10:48 am	AUSA Brooks offers Government Exhibit 54K. Objection, overruled. Government Exhibit 54K admitted.
11:15 am	AUSA Brooks offers Government Exhibit 33B. No objection. Government Exhibit 33B admitted.
11:29 am	AUSA Brooks offers Government Exhibit 26B. No objection. Government Exhibit 26B admitted.
11:37 am	Defense counsel Joe White begins cross examination of Special Agent Paul Mack.
11:46 am	Jury excused for lunch. Court addresses defense counsel regarding proffer agreement issue.
11:51 a.m.	Court in recess for lunch.
12:47 p.m.	Court re-convened. Jury seated.
12:48 p.m.	Defendant's counsel, Joe White continues cross examination of Special Agent Paul Mack.
2:29 p.m.	Jury excused for break.
2:30 p.m.	Court recess for break.
2:45 p.m.	Court re-convened.
2:46 p.m.	Court inquires of the Parties what timing the Court should provide to the jury. Parties agree that the Court should advise the jury it could be an additional week.
2:48 p.m.	Jury seated.
2:48 p.m.	Defendant's counsel, Joe White continues cross examination of Special Agent Paul Mack.
4:00 p.m.	Court advises jury to plan for an additional week of service.
4:00 p.m.	Jury excused.
4:01 p.m.	Court inquires regarding proffer agreement. The court hears continued argument from the Government regarding the proffer statement. The government has available John Coyle and Rafael De La Garza for testimony if needed. Court hears response argument from Defendant's counsel.
4:04 p.m.	The court brings forward Defendant's former counsel, Rafael De La Garza, II of his knowledge of the meetings regarding the proffers. Court recognizes counsel as an officer of the Court so no need to take oath. The court instructs counsel to answer all questions posed to him. Government AUSA Heather Rattan begins examination of Rafael De La Garza, II.
4:11 p.m.	Defendant's counsel, Joe White begins cross examination.
4:15 p.m.	Witness excused.
4:17 p.m.	Court connects with John Coyle connects via phone conference. Court recognizes counsel as an officer of the Court so no need to take oath. Court orders Counsel to answer those questions but not regarding any conversations had with Defendant Mercer-Erwin.
4:31 p.m.	Defendant's counsel, Joe White begins cross examination.
4:38 p.m.	Witness excused.
4:38 p.m.	Government calls HSI Special Agent, Justin Marshall. Agent is reminded he is still under oath.
4:40 p.m.	Defendant's counsel, Joe White begins cross examination of Special Agent, Justin Marshall.
4:46 p.m.	Defendant's counsel, Joe White calls Brett Behenna. Court recognizes counsel as an officer of the Court so no need to take oath.

4:51 p.m.	Government AUSA Heather Rattan begins cross examination of Brett Behenna. Government AUSA Heather Rattan offers Government Exhibit 1 (for purposes of hearing outside the presence of jury).
4:56 p.m.	Witness excused.
4:56 p.m.	Court inquires as to the Parties position regarding waiver. Court hears argument from AUSA Brooks regarding waiver. Court hears response argument from Defendant's counsel, Joe White regarding waiver.
5:08 p.m.	Court hears further argument from AUSA Brooks.
5:09 p.m.	The Court takes the matter under advisement. Court will enter a decision Monday at 8:15. If there are other issues we will meet at 8:05 a.m.
5:10 p.m.	Court adjourned.
	Govt Exhibits Admitted: 33A, 54K, 33B, 26B Demo Only: 31, 97, 30 Deft Exhibits Admitted:

DAVID O'TOOLE, CLERK

BY: Kearny Conrad
Courtroom Deputy Clerk